

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA, et al.,

Plaintiffs,

v.

TWIN AMERICA, LLC, et al.,

Defendants.

Civil Action No. 12-cv-8989 (ALC) (GWG)

ECF Case

JOINT MOTION FOR LEAVE TO FILE UNDER SEAL

Plaintiffs United States of America and State of New York (“Plaintiffs”) and Defendants Twin America, LLC, Coach USA, Inc., International Bus Services, Inc., CitySights LLC, and City Sights Twin, LLC (“Defendants”) (together with Plaintiffs, “Parties”), through their undersigned counsel, hereby move this Court for an Order granting leave to file certain documents and portions of documents relating to Defendants’ summary judgment and *Daubert* motions under seal pursuant to the Stipulated Protective Order (Dkt. No. 29) and the Third Amended Order And Stipulation Concerning The Filing Of A Motion To Seal In Connection With Summary Judgment And *Daubert* Motions (Dkt. No. 101), as specified below. Where a document is not listed below, the Parties have agreed to its filing on the public docket, in its entirety.

I. PLAINTIFFS' OPPOSITIONS TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND *DAUBERT* MOTIONS

The Parties have conferred and agreed to the sealing of the information in red boxes in the following documents submitted in connection with Plaintiffs' Oppositions to Defendants' Motion for Summary Judgment and *Daubert* Motions:

1. Portions of Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment (**Exhibit A** hereto);
2. The word indices of Exhibits 1, 2, 7, 20, 29, 40, 53, 69, and 70 of the Declaration of Sarah L. Wagner in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment (**Exhibit B** hereto);
3. Portions of Exhibits 9, 11, 17, 28, 36, 37, 47, 51, 52, and 80 of the Declaration of Sarah L. Wagner in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment (**Exhibit C** hereto);
4. Portions of Plaintiffs' Memorandum in Opposition to Defendants' Motion to Exclude Certain Expert Testimony of Dr. Russell Pittman (**Exhibit D** hereto);
5. Portions of Exhibit 2 of the Declaration of Sarah L. Wagner in Support of Plaintiffs' Memorandum in Opposition to Defendants' Motion to Exclude Certain Expert Testimony of Dr. Russell Pittman (**Exhibit E** hereto);
6. Portions of Exhibit 7 of the Declaration of Matthew Siegel in Support of Plaintiffs' Memorandum of Law in Opposition to Defendants' *Daubert* Motions to Exclude The Testimony of Sumanta Ray and Guy Ben-Ishai (**Exhibit F** hereto);
7. Portions of the Declaration of Sumanta Ray, CFA (**Exhibit G** hereto).

The Parties have conferred and agreed to the sealing, in their entirety, of Exhibits 3, 16, 18, 66, 71, 74, and 75 of the Declaration of Sarah L. Wagner in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment (**Exhibit H** hereto) and Exhibits 13, 14, and 15 of the Declaration of Matthew Siegel in Support of Plaintiffs' Memorandum of Law in Opposition to Defendants' *Daubert* Motions to Exclude The Testimony of Sumanta Ray and Guy Ben-Ishai (**Exhibit I** hereto).

All of the above-referenced material has been designated Confidential or Highly Confidential by non-parties or Defendants in this case pursuant to the Stipulated Protective Order (Dkt. No. 29).

Pursuant to the Order and Stipulation Concerning the Filing of Summary Judgment and *Daubert* Motions (Dkt. No. 70), Plaintiffs served upon the Court unredacted versions of their Oppositions to Defendants' Motion for Summary Judgment and *Daubert* Motions and all supporting declarations and exhibits, on July 21, 2014.

The documents and information submitted in connection with the Plaintiffs' Opposition papers about which the Parties were unable to agree are addressed in **Section III** below.

II. DEFENDANTS' REPLY BRIEFS IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND *DAUBERT* MOTIONS

The Parties have conferred and agreed to the sealing of the information in red boxes in the following documents submitted in connection with Defendants' Reply Memoranda in support of their Motion for Summary Judgment and *Daubert* Motions:

1. Portions of Defendants' Reply Memorandum of Law in Support of Defendants' Motion for Summary Judgment (**Exhibit 1** hereto);
2. Portions of Exhibits 68-71, 76, 86, 88, 89, and 90 to the Declaration of Amanda L. Fretto in Further Support of Defendants' Motion for Summary Judgment (**Exhibit 2** hereto);

The Parties have conferred and agreed to the sealing, in their entirety, of Exhibits 74, 79, and 80 of the Declaration of Amanda L. Fretto in Further Support of Defendants' Motion for Summary Judgment (**Exhibit 3** hereto).

Pursuant to the Order and Stipulation Concerning the Filing of Summary Judgment and *Daubert* Motions (Dkt. No. 70), Defendants served upon the Court unredacted versions of their Reply Memoranda in support of their Motion for Summary Judgment and *Daubert* Motions and all supporting declarations and exhibits, on August 4, 2014.

The documents and information submitted in connection with the Defendants' Reply papers about which the Parties were unable to agree are addressed in **Section III** below.

III. DOCUMENTS AND INFORMATION IN DISPUTE

After conferring in good faith and agreeing to the majority of proposed redactions, the Parties have been unable to agree on certain redactions to certain documents and information.

For the following documents, the Parties have conferred and agreed to the sealing of the information in red boxes; however, Plaintiffs do not consent to the sealing of information highlighted in blue:

1. Portions of Exhibit A to Defendants' Reply Memorandum of Law in Support of Defendants' Motion for Summary Judgment¹ (**Exhibit 4** hereto);
2. Portions of Defendants' Reply Memorandum of Law in Support of Defendants' *Daubert* Motions To Exclude The Testimony Of Guy Ben-Ishai And Sumanta Ray (**Exhibit 5** hereto);
3. Portions of Exhibit 55 to the Declaration of Amanda L. Fretto in Support of Defendants' Motion for Summary Judgment/ Exhibit 1 to the Declaration of Andrew D. Lazerow in Support of Defendants' *Daubert* Motion to Exclude Certain Expert Testimony of Dr. Russell Pittman (**Exhibit 6** hereto);
4. Portions of Exhibit 56 to the Declaration of Amanda L. Fretto in Support of Defendants' Motion for Summary Judgment (**Exhibit 7** hereto);
5. Portions of Exhibit 3 to the Declaration of Andrew D. Lazerow in Support of Defendants' *Daubert* Motion to Exclude Certain Expert Testimony of Dr. Russell Pittman (**Exhibit 8** hereto);
6. Portions of Exhibit 1 to the Declaration of Andrew D. Lazerow in Support of Defendants' *Daubert* Motion to Exclude Testimony of Dr. Guy Ben-Ishai/ Exhibit 2 of the Declaration of Matthew Siegel in Support of Plaintiffs' Memorandum of Law in Opposition to Defendants' *Daubert* Motions to Exclude The Testimony of Sumanta Ray and Guy Ben-Ishai (**Exhibit 9** hereto);

¹ Plaintiffs will file their Local Rule 56.1 Counter-Statement of Material Facts, and Defendants will file their Local Rule 56.1 Statement of Material Facts and their Response to Plaintiffs' Local Rule 56.1 Statement of Material Facts, separately on the docket. The redactions to these documents will be consistent with the redactions agreed to in the Complete Set of All Asserted Material Facts and Responses, Exhibit 4 to this motion.

7. Portions of Exhibit 2 to the Declaration of Andrew D. Lazerow in Support of Defendants' *Daubert* Motion to Exclude Testimony of Dr. Guy Ben-Ishai (**Exhibit 10** hereto)/ Exhibit 11 of the Declaration of Matthew Siegel in Support of Plaintiffs' Memorandum of Law in Opposition to Defendants' *Daubert* Motions to Exclude The Testimony of Sumanta Ray and Guy Ben-Ishai;
8. Portions of Exhibit 1 to the Declaration of Andrew D. Lazerow in Support of Defendants' *Daubert* Motion to Exclude Testimony of Sumanta Ray/ Exhibit 1 of the Declaration of Matthew Siegel in Support of Plaintiffs' Memorandum of Law in Opposition to Defendants' *Daubert* Motions to Exclude The Testimony of Sumanta Ray and Guy Ben-Ishai (**Exhibit 11** hereto);
9. Portions of Exhibit 2 to the Declaration of Andrew D. Lazerow in Support of Defendants' *Daubert* Motion to Exclude Testimony of Sumanta Ray/ Exhibit 10 of the Declaration of Matthew Siegel in Support of Plaintiffs' Memorandum of Law in Opposition to Defendants' *Daubert* Motions to Exclude The Testimony of Sumanta Ray and Guy Ben-Ishai (**Exhibit 12** hereto);
10. Portions of Exhibit 21 and 48 of the Declaration of Sarah L. Wagner in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment (**Exhibit J** hereto);
11. Portions of Plaintiffs' Memorandum of Law in Opposition to Defendants' *Daubert* Motions to Exclude the Testimony of Sumanta Ray and Guy Ben-Ishai (**Exhibit K** hereto);
12. Portions of Exhibits 8, 18, and 21 of the Declaration of Matthew Siegel in Support of Plaintiffs' Memorandum of Law in Opposition to Defendants' *Daubert* Motions to Exclude The Testimony of Sumanta Ray and Guy Ben-Ishai (**Exhibit L** hereto).

Defendants also seek to seal in their entirety the following documents submitted in connection with Plaintiffs' Opposition to Defendants Motion for Summary Judgment, to which Plaintiffs do not consent: Exhibits 4, 5 of the Declaration of Sarah L. Wagner in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment (**Exhibit M** hereto).

Defendants maintain that the information **highlighted in blue** in the documents attached as Exhibits 4-12, J-L and the entirety of the documents attached as Exhibit M contains or refer to proprietary transactional data, financial results, pricing information, and/or other business strategy information that has not been published or otherwise made publicly available. Plaintiffs

have consented to, *inter alia*, the redaction of certain financial information of the Defendants from 2011 to the present, but generally speaking not to pre-2011 information.

Dated: August 22, 2014

Respectfully submitted,

s/ Andrew Garver*

Andrew Garver
Trial Attorney
U.S. Department of Justice, Antitrust
Division
450 Fifth Street, NW, Suite 8000
Washington, D.C. 20530
202-532-4711
Andrew.Garver@usdoj.gov

For Plaintiff United States

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s/ Jeremy R. Kasha*

Jeremy R. Kasha
State of New York
Office of the Attorney General
Antitrust Bureau
120 Broadway, 26th Floor
New York, NY 10271-0332
212 416-8277
Jeremy.Kasha@ag.ny.gov

For Plaintiff State of New York

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s/ Ryan M. Decker

Michael P. A. Cohen
Ryan M. Decker
Amanda L. Fretto
PAUL HASTINGS LLP
875 15th Street, N.W.
Washington, D.C. 20005
Telephone: (202) 551-1823
Facsimile: (202) 551-0223
ryandecker@paulhastings.com

*For Defendants Twin America, LLC,
CitySights LLC, and City Sights Twin, LLC*

s/ Andrew Lazerow

Thomas O. Barnett
Andrew D. Lazerow
COVINGTON & BURLING LLP
1201 Pennsylvania Avenue N.W.
Washington, DC 20004
Telephone: (202) 662-6000
Facsimile: (202) 662-6291
alazerow@cov.com

*For Defendants Coach USA, Inc. and
International Bus Services, Inc.*